

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**

<b>ANTHONY L. GAINES,</b>	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-555-JJF
	:	
<b>THOMAS CARROLL,</b> Warden,	:	
and <b>M. JANE BRADY,</b>	:	
Attorney General of the	:	
State of Delaware	:	
	:	
Respondents.	:	

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondents move for an extension of time in which to file an answer to the petition. In support thereof, the respondents state the following:

1. The petitioner, Anthony L. Gaines, has applied for federal habeas relief challenging a finding by the Delaware Superior Court that he had violated the conditions of his probation. Gaines had previously pled guilty and been sentenced in January 2001 for second degree burglary. (D.I. 1). By the terms of the Court's order, the answer is due to be filed on or before November 7, 2005.

2. Due to case load and various other matters, undersigned counsel needs additional time to prepare and file an answer to the petition. In the last six weeks, counsel, in addition to other matters, filed answers in two other federal habeas cases, a supplemental memorandum in another federal habeas case, participated in two federal habeas hearings,

argued a capital case pending on appeal in the Third Circuit, and filed with co-counsel an answering brief in a capital case in the state supreme court. Moreover, due to internal matters, this case was only recently assigned to undersigned counsel, the case first having been assigned to a different deputy in the Appeals Division. The undersigned also had primary responsibility for planning the programming and logistics for this year's Attorney General's retreat which occurred on Wednesday, September 21 through Friday, September 23, 2005. Counsel's time commitment to the training seminar was very extensive: the event was attended by approximately 150 members of the office and included least ten presenters, including several from different states. Counsel was also absent from the office on a long-planned pre-paid vacation during the week of October 9, 2005. Because of this work load, counsel requires the additional time to prepare the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondents' first request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondents submit that an extension of time from November 7, 2005 to and including November 23, 2005 is reasonable.

/s/

\_\_\_\_\_  
Thomas E. Brown (ID# 3278)  
Deputy Attorney General  
Department of Justice  
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Date: November 3, 2005

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>ANTHONY L. GAINES,</b>	:	
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Petitioner,	:	
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v.	:	Civ. Act. No. 05-555-JJF
	:	
<b>THOMAS CARROLL,</b> Warden,	:	
and <b>M. JANE BRADY,</b>	:	
Attorney General of the	:	
State of Delaware	:	
	:	
Respondents.	:	

**ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_, 2005,

WHEREAS, respondents having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before November 23, 2005.

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United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/  
Thomas E. Brown  
Deputy Attorney General  
Del. Dept. of Justice

Counsel for Respondents

Date: November 3, 2005

**CERTIFICATE OF SERVICE**

The undersigned, being a member of the Bar of this Court, hereby certifies that on November 3, 2005 he caused to be electronically filed a Motion for Extension of Time with the Clerk of the Court using CM/ECF. I hereby certify that on November 3, 2005 I have also caused to be mailed by first class U.S. Mail two copies of the document to the following non-registered participant, the petitioner:

Anthony L. Gaines (No. 00181314)  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977.

/s/  
Thomas E. Brown  
Deputy Attorney General  
Del. Dept. of Justice  
  
Counsel for Respondents

Date: November 3, 2005